

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Petition for Declaratory Ruling and Rulemaking)	WC Docket No. 05-176
Regarding IP-Enabled Dial-Around Calls)	
from Payphones)	

**RBOC PAYPHONE COALITION’S COMMENTS
IN SUPPORT OF APCC’S PETITION FOR DECLARATORY RULING
AND IN OPPOSITION TO ITS PETITION FOR RULEMAKING**

The RBOC Payphone Coalition (the “Coalition”)¹ files these comments in support of the American Public Communications Council’s (“APCC”) petition for declaratory ruling and in opposition to its petition for rulemaking. Payphone service providers (“PSPs”) have a statutory right to compensation for all completed calls originating from their payphones. The Commission should therefore declare that all payphone calls that originate on the public switched telephone network (“PSTN”) are subject to the compensation requirement of 47 C.F.R. § 64.1300, and that the entity completing any such call is liable for such compensation and subject to the Commission’s reporting and audit requirements. The Commission should make clear, however, that treating entities as “completing carriers” for this purpose does not affect their status for any other purpose.

Because the Commission can resolve this issue based on existing rules and orders, it should not initiate any rulemaking proceeding. APCC correctly notes that IP-enabled payphones do not exist today; there is no reason to believe that such a development is likely. Given the regulatory complexities, the Commission should not address these hypothetical scenarios.

¹ The RBOC Payphone Coalition includes the payphone operations of the Verizon telephone companies and SBC Communications Inc.

DISCUSSION

I. The Commission Should Declare that All Calls from Payphones that Originate on the PSTN Are Subject to Per-Call Compensation

The Commission's compensation rules implement the statutory directive of section 276(b)(1)(A), which requires the Commission to adopt rules ensuring that PSPs are "fairly compensated for each and every completed intrastate and interstate call using their payphone." 47 U.S.C. § 276(b)(1)(A). The term "call" is not defined in the statute; in context, it is reasonable to give the term its ordinary meaning – that is, any communication initiated by a caller from a payphone attached to the PSTN. (We take no position on whether the term would include calls initiated using an IP-enabled payphone.) Because the concern of Congress was to ensure that PSPs would be fairly compensated for the use of their payphones, it should not matter how the call itself is characterized for other regulatory purposes – in any case, the service that the PSP provides is the same.

The Commission has determined that it "can best ensure 'fair compensation' for every 'completed call' by requiring the entity that: (1) is the primary economic beneficiary of PSP services; and (2) has control over the most accurate call completion data to compensate the PSPs." Report and Order, *Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 18 FCC Rcd 19975, 19987, ¶ 26 (2003) ("Payphone Audit Order"). The Commission has embodied this determination in rules providing that "a Completing Carrier that completes a coinless access code or subscriber toll-free payphone call from a switch that the Completing Carrier either owns or leases shall compensate the [PSP]." 47 C.F.R. § 64.1300(b). The rules further provide that, "[f]or purposes of this subpart, a Completing Carrier is a long distance carrier or switch-based long distance reseller that completes a coinless access code or subscriber toll-free payphone call." *Id.* § 64.1300(a).

The Commission has already ruled that one type of call involving IP transmission – *i.e.*, the “IP-in-the-middle” calls that were the subject of the *AT&T Declaratory Ruling*² – is a telecommunications service. It should therefore be uncontroversial that any entity delivering such a call to a local exchange carrier for delivery to the called party is a “long distance carrier or switch-based long-distance reseller” for purposes of the payphone compensation rules. 47 C.F.R. § 64.1300(a).

In the case of calls that are delivered to the called party in IP format, the application of the language of the rule is less straightforward, but the proper result is clear. Whenever a service provider offers a service to customers using 800 numbers that can be accessed from a payphone attached to the PSTN, the service provider should bear responsibility for compensating the payphone service provider for the use of the payphone. From the perspective of the PSP (and the caller), a call is a call is a call – the functionality provided by the PSP is identical in all cases, and the compensation should be as well.

Likewise, in light of the rationale underlying the Commission’s assignment of compensation responsibility, any entity that completes a call from the payphone – however that entity may be characterized for other regulatory purposes – should bear responsibility for paying compensation. As the APCC explains, the entity that completes a payphone-originated call that is subject to compensation is generally either the dial-around provider or the subscriber 800-service provider. *See* APCC Pet. at 14, 15. Such entities are the “primary economic beneficiar[ies]” of the call and have access to and control over the “most accurate call completion data” – regardless of the underlying technology they use. *Payphone Audit Order*, 18

² Order, *Petition for Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephony Services Are Exempt from Access Charges*, 19 FCC Rcd 7457 (2004).

FCC Rcd at 19987, ¶ 26. Accordingly, such entities are responsible for payment of per-call compensation and must comply with the Commission's audit and reporting rules.

The Commission should make clear, however, that its determination in this regard is strictly limited to assignment of responsibility for payphone compensation. Payphone compensation obligations reflect the statutory requirement that payphone providers be compensated for the use of their payphones. Any communications service provider that depends on the use of payphones to provide service to its customer – whether the customer is a dial-around caller or an 800-number subscriber – should have the same obligation to compensate the PSP. The classification of the underlying communications service for other regulatory purposes should not affect that obligation. By the same token, however, the determination that payphone compensation should be paid should not affect, or be understood to reflect any determination about, the classification of the underlying communications services. Indeed, given the complexity of the issues facing the Commission in characterizing IP-enabled services, the Commission should make explicit that any determination it reaches in resolving APCC's petition will have no bearing on its resolution of the issues raised in either the *IP-Enabled Services* rulemaking or the *Intercarrier Compensation* proceeding. Cf. *AT&T Declaratory Ruling*, 19 FCC Rcd at 7458, ¶ 2.

II. The Commission Should Not Initiate a Rulemaking in Response to APCC's Petition

The Commission should not initiate any rulemaking proceeding to address any other issues related to payphones and IP-enabled services raised by APCC.

First, the Commission can resolve the issues raised by APCC's petition for declaratory ruling based on existing rules and prior orders in the payphone proceeding. Although, as noted above, the Commission's rules speak specifically about long distance carriers and switch-based

resellers, the *Payphone Audit Order* and other prior orders make clear that (1) PSPs are entitled to compensation for all calls, except those that are exempt from compensation by statute; (2) the proper entity to pay compensation is the primary economic beneficiary of the call and the entity that has access to and control over the most accurate call completion information. The Commission has also made clear that the entities that pay compensation likewise have call-tracking, reporting, and audit responsibilities under the Commission's existing rules. Those existing principles dictate the correct treatment of the calls at issue here that rely on IP technology.

Second, there is no reason for the Commission to address the treatment of IP-enabled payphones at this time. As APCC concedes, there is currently no such thing as an IP-enabled payphone, and there is no reason to think that any such development is likely, let alone imminent. Because IP-enabled payphones are currently just a hypothetical possibility, any analysis of their proper treatment for regulatory purposes is essentially speculative. Indeed, under these circumstances, the Commission would likely be unable to assemble a sufficient record upon which to adopt new rules. The Commission should not devote its resources to such an exercise in guesswork.

Respectfully submitted,

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